



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2012

Mr. William P. Chesser
City Attorney
City of Brownwood
P.O. Box 1389
Brownwood, Texas 76804

OR2012-07093

Dear Mr. Chesser:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 453514.

The Brownwood Police Department (the "department") received a request for any information pertaining to a named individual and any investigation of this individual concerning two named children. You claim the responsive information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This section encompasses section 261.201 of the Family Code, which provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we find the submitted information was used or developed in an investigation by the department of alleged or suspected child abuse for purposes of section 261.201. *See id.* § 261.001(1)(E) (defining “abuse” for purposes of chapter 261 as including offense of indecency with child under Penal Code section 21.11), *see also* Penal Code § 22.11(a) (defining “child” for purposes of Penal Code section 21.11 as person under 17 years of age). Thus, this information is subject to section 261.201. We note, however, the requestor is the authorized representative of a parent of the alleged child victims at issue and this parent is not alleged to have committed the alleged or suspected

abuse. Thus, the department may not withhold the submitted information from the requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). However, before the department provides any of this information to the requestor, the department must redact the identity of the person who made the report. *See id.* § 261.201(l)(3). In addition, the department must redact any information that is otherwise excepted from required disclosure under the Act. *See id.* § 261.201(l)(2). As you raise section 552.108 of the Government Code, we will consider its applicability to the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide a letter from the department confirming, the submitted information pertains to a pending criminal investigation. Based on these representations and our review, we conclude release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) is applicable to the submitted information.

We note, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the department must withhold the identity of the person who made the report under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.² *See* Fam. Code § 261.201(l)(3).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

²We note the requestor has a special right of access to the information being released. *See* Fam. Code § 261.201(k). Accordingly, if the department receives another request for this information from a different requestor, then the department should again seek a decision from this office. *See* Gov’t Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in dark ink, appearing to read 'KLC', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 453514

Enc. Submitted documents

c: Requestor
(w/o enclosures)